UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

RICHARD J. REGIMBALD,	:	
	:	
v.	:	Docket No. 1:01-CV-368
	:	
GENERAL ELECTRIC COMPANY	:	
_____	:	

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
(Paper 24)

Pro se plaintiff, Richard J. Regimbald, an employee of Defendant, General Electric Company ("GE"), since 1978, has sued GE, claiming he was denied opportunities for training and advancement on the basis of alleged disabilities, his status as a Vietnam veteran, and his race and sex, in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., ("ADA"), the Vietnam Era Veterans' Readjustment Act, 38 U.S.C. § 4212 ("VEVRA"), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., respectively. GE has now moved for summary judgment, arguing it never received notice of Regimbald's disability and therefore cannot be liable under the ADA. GE also contends Regimbald has not produced sufficient evidence to withstand summary judgment that any adverse employment actions were as a result of his veteran status, or other impermissible discrimination.

Motions for summary judgment are granted if, viewing the evidence and the inferences drawn from the facts in the light

most favorable to the party opposing the motion, there is no genuine issue of any material fact, and the moving party is entitled to judgment as a matter of law. See Lipton v. Nature Co., 71 F.3d 464, 469 (2d Cir. 1995). Summary judgment is only appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Although the same standard for summary judgment applies to a pro se litigant, such a litigant should be given "special latitude in responding to a summary judgment motion." Gonzalez v. Long, 889 F. Supp. 639, 642 (E.D.N.Y. 1995); see also Graham v. Lewinski, 848 F.2d 342, 344 (2d Cir. 1988).

BACKGROUND

Regimbald began working at GE in 1978. In his first years with GE, he occupied a number of different positions encompassing a variety of responsibilities. (Regimbald Depo. (hereinafter "Depo") at 31-36). In April 1980, Regimbald was injured in a motorcycle accident and was absent from work for approximately four months. When he returned, he had a medical restriction resulting from back and neck injuries requiring that he work only in a sitting position. (Depo. at 33-36). GE accommodated this restriction, returning him to a job in

"benching" which he could do while seated.

Over the next three to four years, Regimbald was transferred to a variety of positions. In 1985, Regimbald's Work Classification and Medical Restriction Card indicated that he could return to work with "no restrictions." (Def. Ex. 3)[1]

At issue in this case are at least six positions and training programs within GE for which Regimbald unsuccessfully applied since 1998. GE contends that Regimbald was either unqualified for these positions or was not the best qualified candidate. Regimbald, however, alleges he was denied these opportunities on account of his disability, namely his back and neck injuries and a recently diagnosed traumatic head injury, or for other proscribed reasons.

DISCUSSION

A. Plaintiff's ADA Claims

42 U.S.C. § 12112(a) provides:

> No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

[1] Defendant's Exhibit numbers refer to the exhibits to GE's Statement of Material Facts as to Which No Genuine Issue Remains to Be Tried (Paper 26).

In order to state a claim under this section of the ADA, Regimbald must show (1) he was an individual with a disability within the meaning of the statute; (2) GE had notice of his disability; (3) with reasonable accommodation he could perform the essential functions of the position sought; and (4) GE refused to make such accommodations. See Mitchell v. Washington Central Sch. Dist., 190 F.3d 1, 6 (2d Cir. 1997).

For purposes of the present motion, GE does not question whether Regimbald was disabled within the meaning of the ADA. Instead, GE argues it had no notice of his disability because "an employer's knowledge of the disability is a prerequisite to finding liability" under the ADA. Beck v. Univ. of Wis. Bd. of Regents, 75 F.3d 1130, 1134 (7th Cir. 1996); see also 42 U.S.C. § 12112(b)(4) (prohibiting "excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual") (emphasis added). An employer may not be said to discriminate against an employee based on a disability if the employer had no notice of the disability.

Regimbald, in a thorough and well-prepared pro se response, argues GE did have notice of his disability. He lists information from his medical records on file with GE acknowledging his back and neck injuries, claiming they provided sufficient notice of his disability to make out his

prima facie case.

There is little doubt that GE knew Regimbald had back and neck injuries prior to 1985. Various documents from GE's medical files refer to medical problems resulting from Regimbald's earlier motorcycle accident. In 1985, however, Regimbald's work restrictions were lifted. The documents from that time paint a conflicting picture of Regimbald's medical condition.

One notation, dated April 11, 1985, states: "Old injury [illegible] back 5 yr ago. There is no problem for past 2-3 yrs. Wants off restrictions and ok'ed [sic] by Dr. Walters." (Pl's Ex. 11)[2] The certificate from Dr. Walters, dated April 1, 1985, notes that Regimbald "has been under my personal medical supervision and unable to work at his usual job from April 27, 1980 to April 1, 1985, suffering from compression fracture [illegible]. He should be able to resume his usual occupation on April 2, 1985." (Pl's Ex. 12)

These documents reflect notice to GE of Regimbald's recovery from his disability and his ability to work without restrictions. Regimbald contests this characterization, arguing he sought to have his job restrictions removed "because his benching job was killing his back, and he thought

[2] Plaintiff's Exhibit numbers refer to the exhibits to Regimbald's Response to Defendant General Electric's Motion For Summary Judgment.

he might be able to get another job at GE that would not hurt his back." (Pl's Resp. at ¶ 9(h)) Whatever Regimbald's reason for seeking to have his medical restrictions lifted, however, there is no evidence anywhere in the record to suggest GE was aware of Regimbald's continuing disability. GE knew only that Regimbald's medical restrictions had been lifted. Documents reflecting GE's knowledge of Regimbald's disability prior to 1985 are therefore irrelevant to establishing notice of his disability after 1985.

It appears from additional documents in Regimbald's medical files that he again notified GE of back pain starting in 1998. A notation on January 26, 1998 includes: "[illegible] back support belt – States benches all around and back has been bothering him. P.H. motorcycle accident 4/27/80 – compression fracture 11 and 12 thoracic vertebrae bodies." (Pl's Ex. 14) A progress note from Dr. Richard A. Ryder, dated February 3, 1998 states:

> He has a past history of compression fracture of thoracic vertebrae. His job is Benching and he states that he tends to torque the back while sitting and benching. He is wondering if a back belt would be of any help. I advised that this may help prevent twisting and bending actions and convert more of the movement up into his shoulder girdle. I also advised him about routine back muscle and abdominal muscle strengthening exercises. Okay to try back support. Follow-up with JoAnn on results. (Pl's Ex. 13)

Additional notations indicate that Regimbald continued to seek relief for back pain. On February 3, 1998, he was "given large back support belt." (Pl's Ex. 14) On April 28, 2000, a medical record reflects Regimbald "states GE doesn't care about him. He says both arms hurt and also neck. Advised if he is having pain to see Dr. Stein re: any restrictions he might need for GE's guideline. He acted very confrontational." (Pl's Ex. 14) On June 20, 2001, the same document notes: "He comes to medical ctr. stating he was advised to report any physical complaints to med. dep. and he further states he has numbness in fingers of both hands and much pain. States he has had problems since motorcycle accident. Refuses treatment." (Pl's Ex. 14)

There is no doubt from these various documents and notations that GE was aware that Regimbald had a back injury. Under the ADA, however, that alone is insufficient. The ADA proscribes discriminating against an employee on the basis of a disability. Disability, however, has a specific meaning within the statute, referring to "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. § 12102(2). As a number of courts have explained, back pain is not necessarily a disability within the meaning of the ADA. See e.g., Mahon v. Crowell, 295 F.3d 585, 591 (6th Cir. 2002)

("The record does reflect that [plaintiff's] back impairment causes him distress and limits him in performing some activities, but based on the evidence presented we cannot say he is severely restricted in any of them."); Dupre v. Charter Behavioral Health Sys. of Lafayette, Inc., 242 F.3d 610, 613-14 (5th Cir. 2001).

To put an employer on notice of a disability, an employee need not necessarily describe his disability in terms of the ADA's formal definition of an impairment that substantially limits a major life activity. It is, in other words, the content of the information provided to the employer that will establish notice. In this case, however, Regimbald has produced no evidence that GE was given any reason to believe his injury was serious enough to impair a major life activity. Construing the facts in the light most favorable to Regimbald, and drawing all reasonable inferences in his favor, GE knew that Regimbald had back pain but did not know he was disabled under the ADA.

The same reasoning applies to Regimbald's alleged head injury. GE had no knowledge of the head injury at all until September 20, 2002, at which time Regimbald brought GE a copy of an MRI. (Pl's Ex. 15) Even then, however, Regimbald told GE he did not need any accommodations as a result of the injury and did not identify any impairment to a major life

activity. (Pl's Ex. 15) In fact, it appears that Regimbald remains uncertain about the effect of this traumatic brain injury.

Although GE may have had notice that Regimbald was impaired, "not all impairments are serious enough to be considered disabilities under the statute." Dupre, 242 F.3d at 613. Even assuming Regimbald's injuries were, in fact, a disability within the meaning of the ADA, GE had no reason to believe it was. Absent such notice, Regimbald's ADA claim fails as a matter of law.

B. Plaintiff's VEVRA and Title VII Claims

Regimbald's VEVRA and Title VII claims must also be dismissed. As GE points out, Regimbald provided nothing outside of his complaint to identify discriminatory employment actions undertaken by GE. Summary judgment in an employment discrimination case is appropriate if the plaintiff offers only "unsupported assertions," or "conclusory statements" to support an essential element of his case. See Goenaga v. March of Dimes Birth Defects Found., 51 F.3d 14, 18 (2d Cir. 1995); see also Schwapp v. Town of Avon, 118 F.3d 106, 110 (2d Cir. 1997) ("[E]ven in the discrimination context, a plaintiff must provide more than conclusory allegations of discrimination to defeat a motion for summary judgment.").

Even if the Court were to find that Regimbald has made

out a prima facie case of discrimination on proscribed grounds, GE has provided the Court with uncontradicted affidavits providing nondiscriminatory reasons for the employment actions identified in Regimbald's complaint. In order to defeat summary judgment, Regimbald must produce "sufficient evidence to support a rational finding that the legitimate, nondiscriminatory reasons proffered by the employer were false, and that more likely than not [discrimination] was the real reason for the discharge." Van Zant v. KLM Royal Dutch Airlines, 80 F.3d 708, 714 (2d Cir. 1996). Regimbald has produced no such evidence and summary judgment is therefore appropriate.

For the reasons set forth above, Defendant's motion for summary judgment is GRANTED.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this ____ day of June, 2003.

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J. Garvan Murtha
United States District Judge